IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6417 OF 2003

1. Shri Sunil Baban Kumbhar
and ors. .. Petitioners

Vs.

1. Shri Tatyaba Bapu Pharande and ors. .. Respondents

Mr. Vijay Killedar for petitioners.
Mr. Dilip Bodake for respondent no.1.

CORAM: B.H. MARLAPALLE, J.

Date : June 27, 2006.

P.C.:

1. Heard Mr. Killedar the learned counsel for the petitioners-Judgment Debtors and Mr. Bodake the learned counsel for the respondent no.1-decree holder.

2. Rule. By consent Rule is made returnable forthwith.

3. By the impugned order dated 7/8/2003 two different applications filed at Exhs.32 and 52 in Regular Darkhast No.86 of 1998 came to be rejected. The Judgment Debtors had offered to purchase 1/4th share out of the total area of 66 sq.mtrs. which had

gone to the decree holder and the learned Judge of the trial court rejected the application for the simple reason that when similar prayer was made by the decree holder to buy the share of the Judgment Debtors, the Judgment Debtors had turned down the offer and, therefore, this offer of the Judgment Debtors could not be entertained, when the decree holder was not agreeable. It does not appear from the impugned order that the Executing Court has taken into consideration the scheme of Section 4 of the Partition Act 1893. It is necessary to consider the offer made by the Judgment Debtors and more so because 1/4th share of 66 sq.mtrs. does not seem to be practicable to divide in the execution of the decree.

4. Hence the petition is allowed and the impugned order is hereby quashed and set aside. The Application at Exh.32 is hereby restored to the file in Regular Darkhast No.86 of 1998. The executing court is directed to hear and decide the said application by taking into consideration the scheme of Section 4 of the Partition Act 1893 or any other relevant statute as expeditiously as possible and in

any case before 31st August, 2006.

5. Rule is made absolute accordingly with no order as to costs.

(B.H. Marlapalle,J.)